

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

2005 NOV -2 A 10:27

FIRST GENERAL COUNSEL'S REPORT**SENSITIVE**

MUR 5568

DATE COMPLAINT FILED: October 14, 2004

DATE OF NOTIFICATION: October 21, 2004

LAST RESPONSE RECEIVED: January 27, 2005

DATE ACTIVATED: July 11, 2005

EXPIRATION OF SOL: August 20, 2009

COMPLAINANTS:

Center for Responsibility and Ethics in Washington

RESPONDENTS:

Empower Illinois

Empower Illinois Media Fund

Jeffrey D. Davis

Alan L. Keyes

Keyes 2004, Inc. and Eugene T. Carter,¹ in his
official capacity as Treasurer

Jack Roeser

RELEVANT STATUTES:

2 U.S.C. § 431(4)

2 U.S.C. § 431(8)

2 U.S.C. § 433

2 U.S.C. § 434

2 U.S.C. § 441a(a)

2 U.S.C. § 441a(f)

2 U.S.C. § 441i(e)

INTERNAL REPORTS CHECKED:

Disclosure reports; Commission indices

FEDERAL AGENCIES CHECKED:

Internal Revenue Service

¹ In a March 31, 2005 letter responding to a RFAI, Keyes 2004 informed the Commission that Mary Parker Lewis was appointed Treasurer of Keyes 2004, Inc. on September 1, 2004, and that it had filed an amended Statement of Organization FEC Form 1 with the Secretary of the Senate on September 6, 2004. However, Commission records do not indicate that this form was filed, thus, Eugene T. Carter, in his official capacity as treasurer of Keyes 2004, remains a respondent.

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² We have not received a response from Alan Keyes or his campaign committee

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(1) find reason to believe that EI and EIMF have violated the Act by failing to register and report as political committees and knowingly accepting excessive contributions, (2) find no reason to believe that EI, EIMF, Jeffrey Davis, and Jack Roeser made, or Keyes, Keyes 2004, Inc., or Eugene Carter, in his official capacity as Treasurer, knowingly accepted, excessive in-kind contributions in the form of coordinated communications, and (3) take no action at this time as to Roeser with respect to excessive contributions made to EI and EIMF; and (4) find no reason to believe that Alan Keyes directed Jack Roeser to contribute to EI and EIMF.

II. FACTS

A. FORMATION AND PURPOSE OF EMPOWER ILLINOIS AND EMPOWER ILLINOIS MEDIA FUND

EI and EIMF were both formed on August 20, 2004, twelve days after Alan L. Keyes announced that he was running as the Republican candidate for the United States Senate from Illinois.³ Although the precise relationship between the organizations is unclear, both 527 organizations identify each other as an "affiliated" entity on their IRS registration statements and share the same address.⁴ In addition, Jeffrey Davis, who is named as a Respondent in this matter, is the President of both organizations and was the assistant treasurer for former Senate candidate Jack Ryan, whom Keyes replaced after Ryan dropped out of the race.⁵ See Affidavit of Jeffrey D. Davis at ¶¶ 2-3 ("Davis Aff."), attached as Ex. 1 to Empower Illinois Response. According to publicly available information, neither organization has been incorporated.

1 Empower Illinois Media Fund

³ See EI, IRS Form 8871 (Aug 20, 2004) and EIMF, IRS Form 8871 (Aug 20, 2004), attached as Exs A & B to Compl, Maureen O'Donnell & Scott Fornek, *Keyes Fires Up GOP Faithful*, CHICAGO SUN TIMES, Aug 9, 2004 (reporting Alan Keyes announced candidacy on Aug 8, 2004)

⁴ See EI, IRS Form 8871, EIMF, IRS Form 8871

⁵ See O'Donnell & Fornek, *supra* note 3 (discussing Keyes' replacement of Jack Ryan)

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1 EIMF states that its purpose is "[t]o engage in political advocacy and, in particular, to
2 conduct advertising to educate the citizens of Illinois regarding Illinois candidates, political
3 parties, and issues."⁶ EIMF also has described itself as "a diverse coalition of concerned citizens
4 in the political process" that "is dedicated to educating Illinoisan's [sic] regarding public policy
5 positions of candidates for federal, state and local office and mobilizing conservative voters
6 These activities will help provide the information that Illinoisan's [sic] need to see through the
7 misleading public policies and campaign themes of politicians."⁷

8 In October 2004, EIMF aired what appears to be its first and only political advertisement,
9 entitled "What Do We Really Know About Barack Obama?" ("Obama Ad"), on cable and
10 television stations in the Springfield and Chicago, Illinois areas.⁸ Barack Obama was the
11 Democratic candidate for U.S. Senate in Illinois. This advertisement critiqued Obama's voting
12 record in the Illinois legislature and debuted at the same time that Keyes and Obama were
13 scheduled to debate on October 12, 2004.⁹ The Obama Ad stated:

14 What do we really know about Barack Obama?

15
16 Did you know. . . .

17
18 Obama opposes tougher sentences for gangs who kill . . . innocent children.
19 --HB 1812, 2001

20
21 Obama wants schools to teach sex . . . to kindergarteners.
22 --SB 99, 2003

23
24 Obama supports aborting children even when they are . . . born alive.
25 --SB 230, 1997

⁶ EIMF, IRS Form 8871

⁷ Attachment B at 1

⁸ Davis Aff. at ¶ 18, Eric Krol, *New Ad to Criticize Obama's Vote on Crime, Abortion*, DAILY HERALD, Oct. 12, 2004, attached as Ex. M to Compl.

⁹ Krol, *supra* note 8

1
2 STOP
3 LOOK
4 LISTEN
5

6 LEARN THE TRUTH ABOUT OBAMA¹⁰
7

8 EIMF spent \$55,542 00 on producing and placing the Obama Ad.¹¹

9 Public statements made by Davis about the Obama Ad suggest that it was aired to counter
10 the Obama campaign. For example, commenting on the advertisement, Davis stated, "We tried
11 to stick to his record in the state senate because we know he's out of step with the Illinois voters .
12 . . We want to make sure that people get a chance to at least take a look at it so they can make
13 an informed decision before election day "¹² Davis also stated, "There is a disconnect between
14 the positions Barack Obama has taken as a State Senator and his moderate-sounding rhetoric '
15 during this Senate campaign . . . As people listen to the debates and begin to make their decisions
16 in this important race, we want to make sure they have all the facts."¹³

17 In addition to producing and airing the Obama Ad, EIMF operated two websites. The
18 first website, www.empowerillinoismediafund.org, appears to have focused on Barack Obama.
19 The website criticized Obama, allowed viewers to play the Obama Ad, and made reference to the
20 November 2004 election by stating "Make a list of your own email contacts and send them a

¹⁰ Compl at ¶ 24, Empower Illinois Response, Exhibit 2

¹¹ EIMF FEC Forms 9, filed Oct 13, 2004 and Oct 25, 2004

¹² *Anti-Obama Ad Begins on Central Illinois TV*, ASSOCIATED PRESS, October 12, 2004, attached as Ex N to Compl

¹³ *Truth Squad Takes to the Air To Expose Obama Record*, THE ILLINOIS LEADER, October 11, 2004, at www.illinoisleader.com

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1 message about the importance of November 2nd " EIMF also appears to have paid for a second,
2 very similar website, www.truthaboutobama.org ¹⁴

3 Overall, EIMF reported to the IRS and the Commission that it raised \$92,000 between
4 August and October 2004 and spent \$58,042.00 on advertising costs, \$2,500 of which was for
5 website development and maintenance.

6 2 Empower Illinois

7 EI describes itself as "an educational and political advocacy organization formed for the
8 purpose of engaging Illinois citizens and empowering them to become involved in the political
9 process, to mobilize voters in Illinois on the basis of issues and philosophy to support quality
10 candidates in Illinois."¹⁵ Although a functioning website cannot be found at this time, a web
11 page from a website designer who claims to be responsible for the EI website appears to include
12 a page from the EI website that lists "RACES TO WATCH," including "Bush v Kerry," "Keyes
13 v Obama," and "Crane v Bean "¹⁶

14 EI raised approximately \$19,500 between August and October 2004.¹⁷ EI also spent a
15 total of \$18,802.50 for website development and maintenance, phone service, repayment of a
16 loan to a donor, and reimbursement of funds to Davis between August and December 2004.¹⁸

¹⁴ Because both EIMF websites are now password protected, we were unable to open the web pages. Some archived pages from October 2004 were available and are attached as Attachments B & C. Not all images could be downloaded on these archived pages. The quotations in the main text are taken from these pages.

¹⁵ EI, IRS Form 8871

¹⁶ See Attachment A at 2. Crane v Bean refers to the 2004 Congressional race in the Eighth District of Illinois.

¹⁷ See EI, IRS Form 8872 (Jan. 31, 2005).

¹⁸ *Id.*

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**B. FUNDRAISING BY EMPOWER ILLINOIS AND EMPOWER ILLINOIS
MEDIA FUND**

In a sworn affidavit submitted with his response, Davis stated, "Mr. Roeser and all donors to Empower Illinois and Empower Illinois Media Fund were aware that the purpose of both political committees was to engage in media communications and public advocacy regarding candidates for office in Illinois and, in particular, that the communications would involve discussions of the legislative voting record of Barack O'Bama [*sic*]." Davis Aff. at ¶ 10. Indeed, based upon the retrievable images, the websites of both organizations appear to have included images of Barack Obama and other federal candidates, *see supra* section II.A.2, and requested donations. For example, EIMF's truthaboutobama.org website displayed a link stating, "Donate now. Help educate Illinois voters," under a picture of Obama.¹⁹

Although neither the complaint nor the responses provided copies of fundraising solicitations, an Internet message board posting included a solicitation purportedly received from EIMF²⁰ The poster claimed to quote the solicitation as follows:

Empower Illinois Media Fund, a 527 political organization, has launched a new website (www.truthaboutobama.org) and has placed TV commercials on network TV in central Illinois highlighting unknown facts about State Senator Barack Obama's record while he served in Springfield

The gap of information about Obama's record and his public profile couldn't be larger

DID YOU KNOW THAT . . .

AS CHAIRMAN OF THE HEALTH & HUMAN SERVICES COMMITTEE
OBAMA VOTED TO HAVE SEX EDUCATION TAUGHT TO CHILDREN IN
KINDERGARTEN?

¹⁹ See Attachment A at 3

²⁰ See Attachment D

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Click here for more

Empower Illinois Media Fund's TV campaign aims at closing that gap. To read about Obama's record in Springfield and to view the television ad that will air, log on to www.truthaboutobama.org.

Finally, please consider helping us in this effort by contributing today. For as little as \$100, you'll pay for a 30 second TV ad and help us reach THOUSANDS of ILLINOIS VOTERS.

Think about the difference you'll make.

Click here to contribute

Thank you for your time,

Empower Illinois Media Fund

To unsubscribe, click here ²¹

All of EI and EIMF's fundraising efforts appear to have occurred immediately prior to the November 2004 elections. As stated above, between August and October 2004, EI raised \$19,500.00 in contributions, including \$10,000 from Roeser on August 23, 2004.²² During the same time period, EIMF raised \$92,000 in contributions, including \$30,000 from Roeser on August 23, 2004.²³ There appear to be no records showing that EIMF has raised any money after this time period.

C. JACK ROESER

Jack Roeser is the chairman and founder of Otto Engineering, Inc., and President of an Illinois PAC, the Family Taxpayers Network.²⁴ According to publicly available information cited in the complaint, Roeser announced his support for Keyes and expressed his intent to help with fundraising activities. Although Roeser publicly represented that he intended to raise \$1

²¹ *Id* (emphasis in original)

²² See EI, IRS Form 8872 (Jan 31, 2005)

²³ See EIMF, IRS Form 8872 (Oct 15, 2004), EIMF, FEC Forms 9 (Oct 13, 2004) & (Oct 25, 2004)

²⁴ See Response of Jack Roeser ("Roeser Response") at 2, Teresa Black, *Keyes Warmly Received During Stump in C'ville*, COURIER NEWS, Oct 3, 2004 available at <http://www.suburbanchicagonews.com/couriernews/archives/build/e03keyes.htm>, attached as Ex K to Compl

1 million for Keyes, available information suggests that Roeser hosted only a single fundraiser that
2 raised approximately \$10,000.²⁵ The complaint and attached news reports indicate that Roeser
3 wavered in his support for Keyes due to the candidate's position on reparations for descendants
4 of slaves, but affirmed his support following a meeting in mid-August 2004 to discuss the
5 issue.²⁶ Following the meeting, Roeser gave \$10,000 to EI and \$30,000 to EIMF on August 23,
6 2004.²⁷

7 **II. ANALYSIS**

8 **A. POLITICAL COMMITTEE STATUS**

9 EI and EIMF are Section 527 organizations that file reports with the IRS. By law, a 527
10 organization is "a party, committee, association, fund, or other organization (whether or not
11 incorporated) organized and operated primarily for the purpose of directly or indirectly accepting
12 contributions or making expenditures, or both, for an exempt function." 26 U.S.C. § 527(e)(1).
13 The "exempt function" of 527 organizations is the "function of influencing or attempting to
14 influence the selection, nomination, election or appointment of any individual to any Federal,
15 State, or local public office or office in a political organization," or the election or selection of
16 presidential or vice presidential electors. 26 U.S.C. § 527(e)(2). As a factual matter, therefore,
17 an organization that avails itself of 527 status has effectively declared that its primary purpose is
18 influencing elections of one kind or another.

²⁵ Scott Fornek, *Keyes, GOP Discuss Taking on Obama*, CHICAGO SUN-TIMES, Aug 4, 2004 ("Conservative Jack Roeser, a wealthy businessman from the northwest suburbs, said he expected to help raise \$1 million for Keyes"), attached as Ex E to Compl, Lynne Sweet, *Pressure's Greater on Bush to Perform Well Tonight*, CHICAGO SUN-TIMES, Oct 8, 2004, attached as Ex F to Compl

²⁶ See Compl at ¶ 27, Roeser Response at 3, Doug Finke, *Obama Stars on Governor's Day*, SPRINGFIELD STATE JOURNAL-REGISTER, Aug 19, 2004, attached as Ex I to Compl, Mike Robinson, *Keyes Explains "Market Oriented" Approach to Slave Reparations*, ASSOCIATED PRESS, Aug 17, 2004, attached as Ex G to Compl

²⁷ See EI, IRS Form 8872, EIMF, IRS Form 8872 Roeser also contributed \$1000 to Keyes 2004 Inc on October 2, 2004 See FEC Contributor Database (contributions by John "Jack" Roeser)

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1 The Act defines a "political committee" as any committee, club, association, or other
2 group of persons that receives "contributions" or makes "expenditures" for the purpose of
3 influencing a federal election which aggregate in excess of \$1,000 during a calendar year.
4 2 U.S.C. § 431(4)(A) To address overbreadth concerns, the Supreme Court has held that only
5 organizations whose major purpose is campaign activity can potentially qualify as political
6 committees under the Act. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v.*
7 *Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986) ("MCFL"). The major purpose test is
8 a limiting construction on the statutory definition of a "political committee," which means that
9 an organization meeting the statutory threshold for political committee status must also possess
10 the major purpose of campaign activity. *See MCFL*, 479 U.S. at 262

11 The term "contribution" is defined to include any gift, subscription, loan, advance, or
12 deposit of money or anything of value made by any person for the purpose of influencing any
13 election for Federal office. 2 U.S.C. § 431(8)(A)(i). *See, e.g., FEC v. Survival Educ. Fund, Inc.*,
14 65 F.3d 285, 295 (2d Cir. 1995) (where a statement in a solicitation "leaves no doubt that the
15 funds contributed would be used to advocate [a candidate's election or] defeat at the polls, not
16 simply to criticize his policies during the election year," proceeds from that solicitation are
17 contributions)

18 EI and EIMF appear to have used fundraising solicitations clearly indicating that funds
19 received would be used to target the election or defeat of a clearly identified candidate, likely
20 resulting in contributions meeting the statutory threshold for political committee status. *See*
21 *Survival Educ. Fund*, 65 F.3d at 295. The fundraising solicitation described *supra* page 7 and the
22 truthaboutobama.org website state that funds received would be used to "reach" or "educate"
23 "Illinois voters" about Obama's record; indeed, the e-mail fundraising solicitation states that

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1 donations would "help us reach THOUSANDS of ILLINOIS VOTERS" by "pay[ing] for a 30
2 second TV ad" while containing a link to the Obama ad. Attachment D (emphasis in original).
3 Donors, thus, were clearly informed that the organizations would engage in communications
4 specifically targeted against Obama and designed to mobilize voters against him. Because the
5 solicitations clearly indicated that funds would be used to finance advertisements directed at
6 voters, not merely to criticize Obama's policies during an election year, they resulted in
7 contributions under the Act.
8

9 It appears that EI and EIMF are affiliated and share a single contribution limited under
10 the Commission's regulations, as they were established, maintained, and controlled by the same
11 person, Jeffrey Davis. *See* 11 C.F.R. §§ 100.5(g), 110.3(a)(1). Based on the amounts raised by
12 EI and EIMF, which include contributions from individual donors well in excess of \$5,000, it is
13 likely that funds received in response to such solicitations exceeded \$1,000.

14 In addition, the record suggests that the activities of EI and EIMF were organized to help
15 defeat Barack Obama in the November 2004 election for U.S. Senator from Illinois. While EI
16 and EIMF claim that their purpose was to engage and empower Illinois citizens regarding Illinois
17 candidates, the available information shows that almost all of EI or EIMF efforts focused
18 exclusively on Obama. For example, it appears that the only political advertisement produced or
19 paid for by EIMF was the Obama Ad, which was aired at the same time that the two candidates
20 were scheduled to debate. Similarly, based on available information, the websites run by EI and
21 EIMF appear to have focused on criticizing Obama's record and requesting funds to "Help
22 educate Illinois voters!" Finally, EI and EIMF were formed in August 2004, and their activities
23 appear to have been extremely limited since the November 2004 election.

Based upon the foregoing information, an investigation is warranted to determine the exact nature of EI and EIMF's fundraising activities and disbursements for election related advertisements and other public communications, the relationship between the two organizations, and the scope of their activities. Accordingly, this Office recommends that the Commission find reason to believe that EI and EIMF violated 2 U S C §§ 433, 434, and 441a(f) by failing to register as political committees with the Commission and to report their contributions and expenditures, and by knowingly accepting contributions in excess of \$5,000.

B. COORDINATION

A payment for a coordinated communication is an in-kind contribution to the candidate's authorized committee with which it is coordinated and must be reported as an expenditure made by that candidate's authorized committee. 11 C.F.R. § 109.21(b)(1). In addition, as an in-kind contribution, the costs of a coordinated communication must not exceed a political committee's applicable contribution limits. *See* 2 U.S.C. § 441a.

To determine whether a communication is coordinated, 11 C.F.R. § 109.21 sets forth a three-pronged test: (1) the communication must be paid for by a person other than a Federal candidate, a candidate's authorized committee, or political party committee, or any agent of any of the foregoing; (2) one or more of the four content standards set forth in 11 C.F.R. § 109.21(c) must be satisfied, and (3) one or more of the six conduct standards set forth in 11 C.F.R. § 109.21(d) must be satisfied. *See* 11 C.F.R. § 109.21(a).

In the instant matter, there may be sufficient facts to satisfy the first two elements of the coordinated communications test. First, the Obama Ad was paid for by EIMF, not an authorized committee of a candidate. *See* 11 C.F.R. § 109.21(a). Second, EIMF disseminated public communications that clearly identified Barack Obama within 120 days or fewer of the general

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election and were directed at Illinois voters, satisfying several of the content standards. See 11 C.F.R. § 109.21(c).²⁸

However, there does not appear to be evidence in the complaint or on the public record sufficient to support reason to believe findings predicated on the possibility that respondents satisfied one of the conduct standards. The Commission's regulations set forth six types of conduct between the payor and the committee, whether or not there is agreement or formal collaboration, that can satisfy the conduct prong. See 11 C.F.R. § 109.21(d). Only three of the six types of conduct are potentially relevant here: (1) request or suggestion; (2) material involvement; and (3) substantial discussion.

The complaint alleges that the conduct standard has been met because Davis served as a political consultant and staff member for the former Republican Senate candidate Jack Ryan, and, thus, was closely connected to the Republican party. See Compl. at ¶¶ 25-26. The complaint further alleges that Keyes may have directed Roeser to contribute to EI during the meeting in mid-August 2004, described *supra* at 8, after which Roeser made large contributions to EI and EIMF. Compl. at ¶ 27. According to the complaint, "the implication of this series of events is that the candidate and Mr. Roeser, who funded the advertisements, may have had a substantial discussion about the communication before it was aired, thereby satisfying the 'conduct standard' in violation of the law." *Id.*

²⁸ In *Shays v FEC*, No. 04-5352 (D.C. Cir. July 15, 2005), the Appellate Court affirmed the District Court's invalidation of the fourth "public communication" content standard of the coordinated communications regulation. The District Court had remanded the matter back to the Commission, but in a ruling subsequent to the remand, the District Court explained that the "deficient rules technically remain 'on the books,'" pending promulgation of a new regulation. *Shays v FEC*, 340 F. Supp. 2d 39, 41 (D.D.C. 2004). The public communication standard is still in effect until a new standard is promulgated.

Davis's connection to Ryan is far too speculative a basis from which to infer that any expenditures were coordinated between EI or EIMF and the Keyes campaign. Thus, on this record, Roeser would be the only person through whom coordination could possibly have occurred because he was the only actor known to be in contact with both sides

Roeser was not an employee of EI or EIMF, and there are no facts from which one could infer that he was acting as an agent on behalf of either organization. *See, e.g.*, Roeser Response at ¶ 9, Davis Aff. at ¶ 10. The same is true with respect to Roeser's relationship with the Keyes campaign. All we know is that Keyes met with Roeser, the two may have discussed Keyes's position on slavery reparations, and Roeser later donated substantial amounts to EI and EIMF. These facts do not provide a basis for investigating whether ads run by EI or EIMF were coordinated with the Keyes campaign

C. EXCESSIVE CONTRIBUTIONS

The complaint alleges that Roeser exceeded limits for contributions to political committees by contributing a total of \$40,000 to EI and EIMF. The complaint also alleges that Jack Roeser made an in-kind contribution to the Keyes campaign "by publicly stating that he was supporting Mr. Keyes' campaign and subsequently donating \$40,000 to Empower Illinois Media Fund." Compl. at ¶ 30. In connection with this allegation, the complaint cites 11 C.F.R. § 100.52(d)(1), which states that the provision of goods and services without charge or at less than usual or normal charge is a contribution. *See id.* As Mr. Roeser was not a vendor and does not appear to have provided any goods or services to the Keyes campaign, we interpret this to be an attempt to allege coordination in light of facts set forth in the complaint regarding a meeting between Alan Keyes and Mr. Roeser

we recommend that the Commission take no action at this time with respect to the allegation that Roeser violated 2 U.S.C. § 441a(a)(1)(C) by contributing a total of \$40,000 to EI and EIMF

D. DIRECTION OF FUNDS

The complaint claims that Keyes "may have directed or suggested that Mr. Roeser contribute to Empower Illinois." Compl. at ¶ 27. While this allegation is made in the context of the coordination count, such an allegation, if true, would be a potential violation of 2 U.S.C. § 441i(e)(1)(A), which states that a federal candidate "shall not solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act."

Because the Keyes campaign was prohibited from accepting \$30,000 directly from Roeser under 2 U.S.C. § 441a(a)(1)(A), the complaint implies that Keyes may have directed Roeser to contribute to a 527 organization such as EI or EIMF in an attempt to circumvent the contribution limits of the Act. However, Roeser states in his response that his meeting with Keyes included no discussion of campaign financing, *see* Roeser Response at ¶ 8, and the record contains no other information providing any indication that Keyes asked Roeser to donate funds to EI or EIMF. *See* 11 C.F.R. § 300.2(n) (definition of "to direct").²⁹ The mere fact that Keyes met with a prospective donor who later contributed to EI and EIMF does not provide a basis for a reason to believe finding under § 441i. Accordingly, we recommend that the Commission find there is no reason to believe that Keyes violated 2 U.S.C. § 441i(e)(1)(A).

²⁹ Despite the Appellate Court's ruling in *Shays*, *supra* note 28, invalidating the Commission's regulations defining "solicit" and "direct," under § 441i(e), 11 C.F.R. § 300.2(n) is still in effect until a new rule is promulgated.

1 **IV. PROPOSED DISCOVERY**

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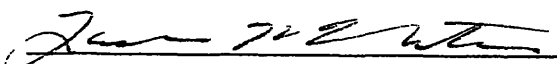
17 **V. RECOMMENDATIONS**

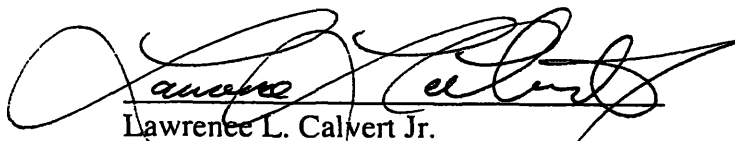
- 1 Find reason to believe that Empower Illinois and Empower Illinois Media Fund violated 2 U.S.C. §§ 433, 434, and 441a(f) by failing to register as a political committee with the Commission, by failing to report contributions and expenditures, and by knowingly accepting contributions in excess of \$5,000.
2. Find no reason to believe that Empower Illinois, Empower Illinois Media Fund, and Jeffrey D Davis violated 2 U.S.C §§ 441a by making excessive in-kind contributions in the form of coordinated expenditures to Alan Keyes or Keyes 2004, Inc


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- 3 Find no reason to believe that Jack Roeser violated 2 U.S.C. § 441a by making excessive in-kind contributions in the form of coordinated expenditures to Alan Keyes or Keyes 2004, Inc.
- 4 Find no reason to believe that Alan Keyes, Keyes 2004, Inc , and Eugene T. Carter, in his official capacity as Treasurer, violated 2 U.S.C. § 441a by knowingly accepting excessive in-kind contributions in the form of coordinated expenditures.
- 5 Take no action at this time with respect to the allegation that Jack Roeser violated 2 U.S.C. § 441a by making excessive contributions to Empower Illinois and Empower Illinois Media Fund
- 6 Find no reason to believe that Alan Keyes violated 2 U.S.C. § 4411(e) by directing or suggesting that Jack Roeser contribute to Empower Illinois.
- 7 Approve the attached Factual and Legal Analysis.
- 8.
- 9 Approve the appropriate letters.

1 10/1/05
2 Date


Lawrence H. Norton
General Counsel


Lawrence L. Calvert Jr.
Deputy Associate General Counsel
For Enforcement


Julie McConnell
Acting Assistant General Counsel


Jin Lee
Attorney

Attachments

20 EI and EIMF Web Pages from Purported Vendor

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- 1 Archived EIMF Web Pages
- 2 Archived truthaboutobama.org Web Pages
- 3 Purported EIMF solicitation
- 4 Factual and Legal Analysis

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ATTACHMENT A



CLAUDEAU TRADING CENTRE TELEPHONE CENTRE ABOUT ILLINOIS CONTACT US

**NEILSON
NATHAN**

Does My Mode Count?

ഡോ. ടോ. അബ്ദുറഹ്മാൻ

DOZATE

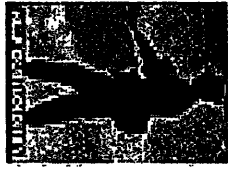


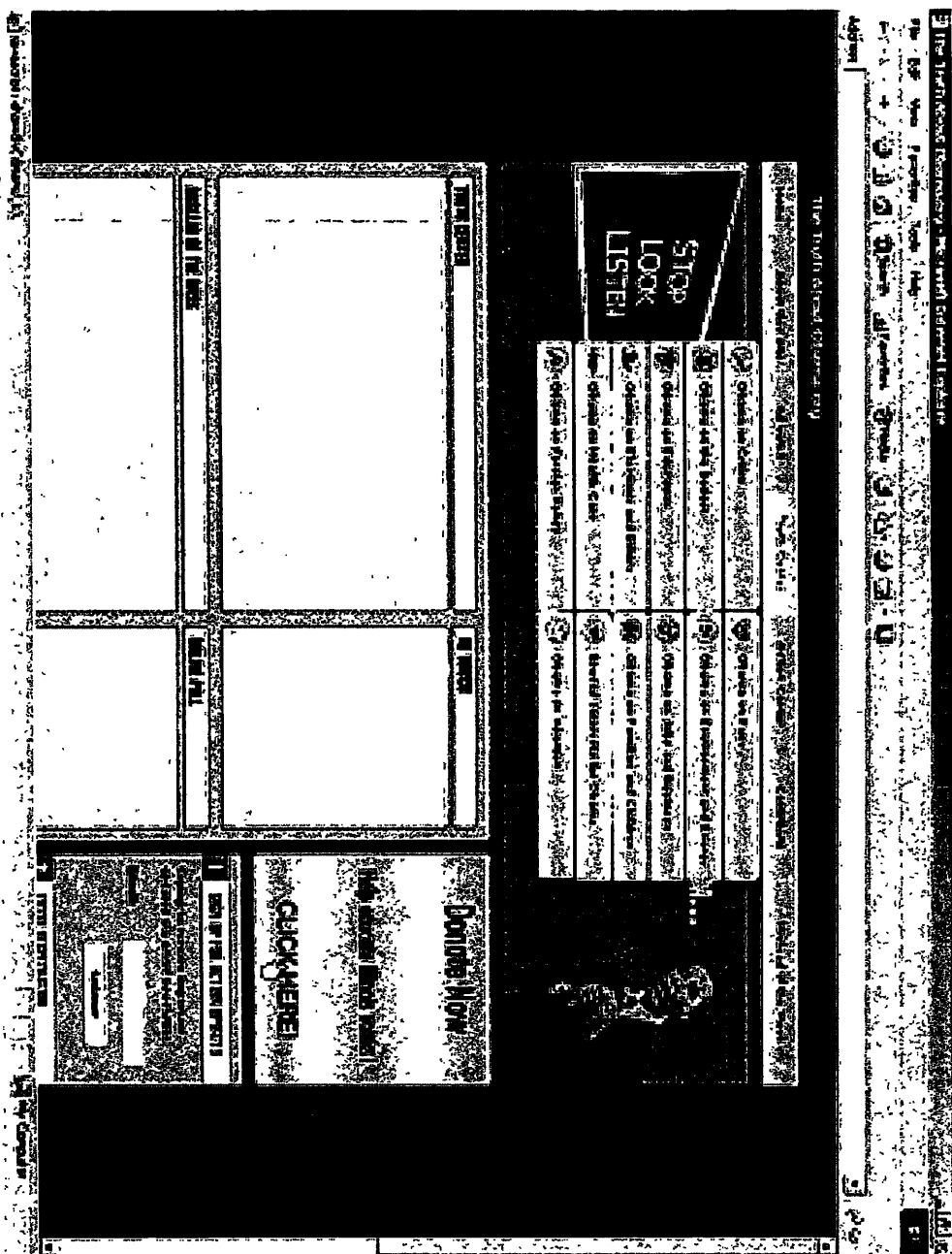
Educational Center

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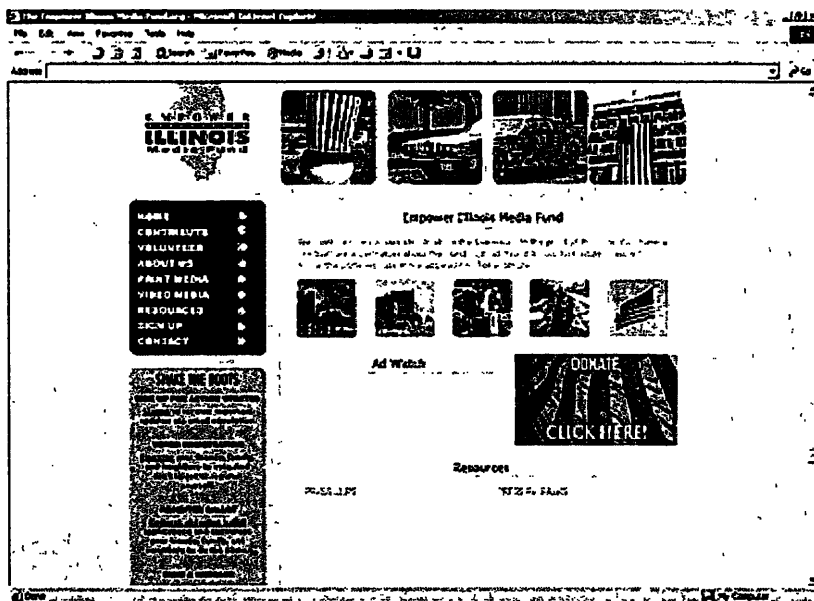




Source: Mirchev Ideas Completed Projects, at <http://www.murchevidas.com/portfolio/index.html> (last visited Aug. 11, 2005).



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ATTACHMENT B

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As a diverse coalition of concerned citizens in the political process, the Empower Illinois Media Fund is dedicated to educating Illinoisan's regarding public policy positions of candidates for federal, state and local office and mobilizing conservative voters. These activities will help provide the information that Illinoisan's need to see through the misleading public policies and campaign themes of politicians

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What Do We Really Know About Barack Obama?

TV AD

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Make a list of your own email contacts and send them a message about the importance of November 2nd

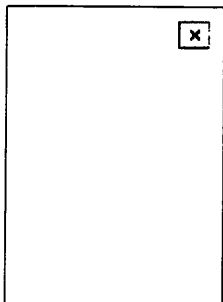
Request absentee ballot applications and encourage your friends, family, and neighbors to do the same

Signup to receive important updates via email newsletter

Tell your friends about EIMF and encourage them to support our cause

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[RADIO AD](#)



Click here to play



Anti-Obama Ad Begins on Central Ill. TV

October 12, 2004
Chicago Sun-Times

Empower Illinois Media Fund Launches TruthAboutObama.org and Television Ad Campaign
October 11, 2004
Chicago, IL

Keyes, Obama clash on Iraq, health care but avoid fireworks
October 12, 2004
Miami Daily Herald

Republican 527s Narrow Gap with Democrats
September 16, 2004
by Amy Keller Roll Call

New ad criticize Obama's votes on crime, abortion
October 12, 2004

New Illinois Money Group
August 26, 2004
by Lynn Sweet Chicago Sun Times

Truth Squad Takes to Air to Expose Obama Record
October 11, 2004

Senator Kerry's position continues to evolve at varying speeds. In an interview with Don Imus this week, it sounded like Senator Kerry was debating Howard

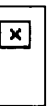
- ☐ More Likely to Support
- ☐ Less Likely to Support
- ☐ Makes No Difference

Dean but it turns out Senator Kerry was the only guest on the show

Even Imus was confused After the interview Imus said, "I asked him a number of questions about Iraq and I can't tell you what he said "

[Vote](#) [Results](#)

[Click watch the video!](#)




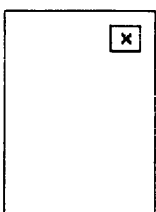
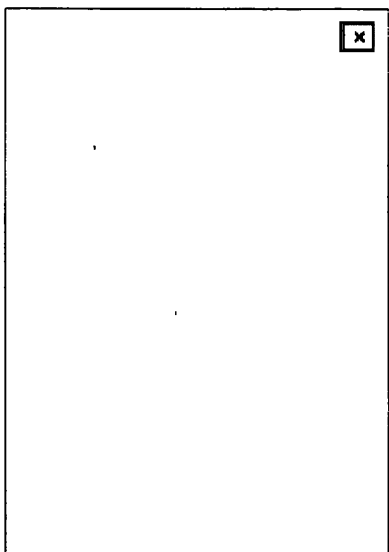
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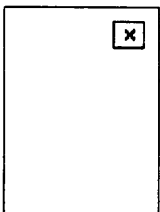
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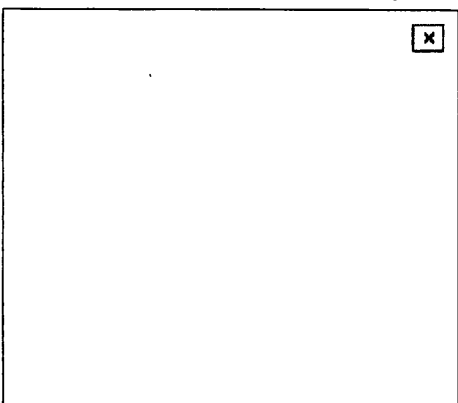
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Click here to play the TV Ad.



Click here to play the Radio Ad.



Troop Support

Barack Obama opposed funding for our troops to have the necessary weapons to win the war.

[Click here to read more.](#)



- ☐ More Likely to Support
- ☐ Less Likely to Support
- ☐ Makes No Difference

[Vote](#) [Results](#)

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Email:



Request absentee ballot
applications and encourage your friends, family, and neighbors to do the same.

Make a list of your own
email contacts and send them a message about the importance of November 2nd

Tell your friends about TruthAboutObama and encourage them to support our cause.



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ATTACHMENT D

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(OT) Kooky Keyes and His Kooky Kooks

by Granville Waiters' Ghost <x@> [Oct 11, 2004 at 10:08 PM](#)

In the last days of Jack Ryan's campaign, I signed up for his website's email news bulletins, hoping to get some good laffs. I never got anything, though, except a statement that a bunch of activists from Citizens for Ryan were throwing their support behind Keyes.

Then this thing arrived, today. TD, you were right about the desperate man striking out blindly. This is the email I got, verbatim:

* * *

Empower Illinois Media Fund, a 527 political organization, has launched a new website (www.truthaboutobama.org) and has placed TV commercials on network TV in central Illinois highlighting unknown facts about State Senator Barack Obama's record while he served in Springfield.

The gap of information about Obama's record and his public profile couldn't be larger.

DID YOU KNOW THAT...

AS CHAIRMAN OF THE HEALTH & HUMAN SERVICES COMMITTEE OBAMA VOTED TO HAVE SEX EDUCATION TAUGHT TO CHILDREN IN KINDERGARTEN?

.... Click here for more

Empower Illinois Media Fund's TV campaign aims at closing that gap. To read about Obama's record in Springfield and to view the television ad that will air, log on to www.truthaboutobama.org.

Finally, please consider helping us in this effort by contributing today. For as little as \$100, you'll pay for a 30 second TV ad and help us reach THOUSANDS of ILLINOIS VOTERS.

Think about the difference you'll make.
Click here to contribute.
Thank you for your time,
Empower Illinois Media Fund
To unsubscribe, click here.

ATTACHMENT D
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